

Approved as Written, submitted for approval, 9/6/00

CITY OF MORGAN HILL
JOINT REDEVELOPMENT AGENCY AND
SPECIAL CITY COUNCIL MEETING
MINUTES - AUGUST 23, 2000

CALL TO ORDER

Vice-Chair/Council Member Sellers called the meeting to order at 7:09 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Cook, Tate and Vice-Chair/Council Member Sellers
Absent: Agency/Council Member Chang, Chair/Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

Deputy Agency Secretary/Deputy City Clerk Corbet certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

PLEDGE OF ALLEGIANCE

At the invitation of Vice-Chair Sellers, Bruce Tichinin led the Pledge of Allegiance.

SILENT INVOCATION

PRESENTATIONS

Ms. Ava Geddes, representative for Town Cats, a feline rescue group located in Morgan Hill. Town Cats has operated as a non-profit, no-kill feline rescue organization in Morgan Hill for the past three years, and urged the City Council to pay the use permit fees associated with establishing a cat adoption center. This center would better serve the community, and the animals, by providing shelter for cats and kittens until volunteer foster homes are secured.

Vice-Chair/Council Member Sellers stated this item would be agendized at a future meeting.

PUBLIC COMMENT

Vice-Chair/Council Member Sellers opened the floor to public comment. There being no comments, Vice-Chair/Council Member Sellers closed the public comment portion.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Agency Member Cook, the Agency*

*Commission voted 3-0, (Kennedy and Chang absent) **approving** Consent Calendar Item 1 as follows:*

1. JULY 2000 FINANCE AND INVESTMENT REPORT

Action: *Accepted and Filed Report*

City Council Action

CONSENT CALENDAR:

Council Member Cook removed Item #3 for discussion.

Action: *On a motion by Council Member Tate and seconded by Council Member Cook, the City Council voted 3-0 (Kennedy and Chang absent) **approving** Consent Calendar Items 2 and 3 as follows:*

2. APPROVAL OF SUBDIVISION IMPROVEMENT AGREEMENT WITH MORGAN HILL DEVELOPMENT PARTNERS, L.P. - DIGITAL DRIVE APN 726-25-012, 021, 023 & 027

Action: ***Approved** the Subdivision Improvement Agreement and Authorize the City Manager to Sign the Agreement on Behalf of the City with Morgan Hill Development Partners, L.P., Digital Drive (APN 726-25-012, 021, 023 & 027)*

3. AB 939 PLANNING AND REPORTING

Action: ***Directed** Staff to Complete Additional Analyses and Bring Back a Status Report and Recommendations in November.*

4. JOINT DEVELOPMENT OF AN AQUATICS CENTER

Council Member Cook asked for a review of the mutual social, environmental and economic benefits to be derived from the joint construction and operation by the City and the Morgan Hill Unified School District (District) of the aquatics facilities.

Council Member Sellers stated by working together the potential is there to develop a facility that 1) would be more significant than either entity could develop on their own and 2) provide a broader range of services than either entity could provide on their own and 3) and a significant cost savings, than if both entities were to go off and proceed separately.

Council Member Tate stated he thought the Council has endorsed this project at a previous meeting; the aquatic center was one of the Visioning Projects, and by working with the District to enhance what could be provided to the community.

Interim City Attorney Leichter stated the Council did state the need to pursue projects jointly with the District, the “mutual social” benefit would be referring to the promotion of relations between the City and the District, and between the different age groups. The thought is, if there is a joint use facility, the different age groups would be able to interact on a social basis. Ms. Leichter further stated, the thought behind the “environmental” benefit is conservation of energy and water, because of the vast resources necessary to operate an aquatic facility. The “economic” benefits refer to maintenance and operation costs, which would mean a savings by having a joint facility, rather than two facilities.

Council Member Cook, when the aquatic center was first discussed in the Visioning process, it was envisioned as a project serving the whole community; families could go, and others could go for physical therapy. How the use will be apportioned between the City and District is unclear.

Mayor Pro Tempore Tate responded by saying this is a first step in expressing the Council's desire to work the District. Each entity will have their own goals, and there will need to be compromise on both sides.

Council Member Cook stated she will not enter into an agreement until location is known.

Council Member Sellers stated the District will be making a decision on the high school site within the next two months, and that he is anxious to proceed with this project.

Council Member Cook asked why the Memorandum of Understanding (MOU) is taking 18 months to be straightened out? Council Member Sellers responded by saying that 18 months is too long and there is a need to push for a shorter time line.

Council Member Sellers opened the floor to public comment.

Public Comment:

Martine Kapetanic stated she would like to see the City build the aquatic center on their own; however, but due to the cost, the City can not maintain a pool on its own. Please keep the option of working with the District open.

Larry Carr, (Member of the Board of Education, also sits on the City/School Liaison Committee), stated it makes perfect sense to have the District and City work together on this project. Mr. Carr hoped the 18 months would be less and urged the Council to keep the door open to working with the District.

Council Member Sellers asked Mr. Carr, would there be objection to the Letter of Agreement being changed to 12 months from 18 months? Mr. Carr stated he didn't believe there would be objections.

Council Member Cook stated the aquatics center has to be at the new high school, are they always at high schools? Mr. Carr responded by saying all the facilities he knows of are on school property.

There being no further comments, Council Member Sellers closed the Public Comment portion.

Mayor Pro Tem Tate stated the 18 months should be shortened and the Council, by means of the Letter of Agreement, is trying to get into place a formal agreement, and if this agreement is not accepted, the time line will be extended.

Council Member Cook asked the Interim City Attorney if the letter agreement states if the Council have to proceed with the project. Ms. Leichter stated the Letter requires the City to use their best efforts to engage in good faith efforts, which is what the City is already doing. It (the Letter of Agreement) does say we're going to try and focus those efforts on creating a Master Plan for development. The intent is to try to continue the good faith efforts, and it doesn't impose a burden on the City, that is not already being undertaken.

Council Member Cook asked how the Parks & Recreation Commission would be taking part in this effort? Council Member Sellers responded by saying that anything discussed with the District would be presented to the Commission and perhaps even the Planning Commission.

Council Member Cook stated there is a cost associated with the Master Plan; do we know what the cost is?

City Manager Tewes stated the total estimated cost of the project is \$5.75 million dollars and in the current fiscal year the Council and Redevelopment Agency g have budgeted \$1,750,000 to do land acquisition to the extent necessary and to do the design and concept work contemplated by this agreement.

Action: *On a motion by Mayor Pro Tem Tate and seconded by Council Member Cook, the City Council, on a 3-0 vote (Kennedy and Chang absent) **approved** the Letter of Agreement Regarding Aquatics Facilities, modifying the time line of the Master Plan to 12 months.*

PUBLIC HEARINGS:

5 ZONING AMENDMENT APPLICATION ZA-98-11: AMENDMENTS TO PUD ORDINANCE AND ESTABLISHMENT OF STANDARDS FOR FIVE PUD DISTRICTS ON CONDIT ROAD AND E. DUNNE AVENUE

David Bischoff presented Staff Report.

Council Member Cook, regarding "Exception to Development Standards," stated the language is unusual; not what is usually stated in City ordinances for making findings for exceptions.

Mr. Bischoff responded by saying, the first iteration had no provisions for exception. At that point there was a concern there may be circumstances under which some modification or deviation from these standards is warranted. So, language mimicking the zoning variance provisions of the City Code, the Planning Commission thought the language was too stringent, and exceptions that don't need to meet the hardship requirement of a true variance, should be allowed. With the issue of substantial property rights, there needs to be some reason for granting it. The language is still subject to modification.

Interim City Attorney Leichter stated the burden of proof would be on the applicant, just like in a variance hearing, to come forward and present the proof necessary for the Council to make the findings; it's going to be a case by case analysis.

Council Member Sellers, with regard to Area 5, it is stated that no more than 3, 2-story buildings and no more hotels will be allowed, what 2-story building, other than a hotel, would be built there? Mr. Bischoff responded by saying, offices, but most likely the 3-stories would be hotels.

Council Member Sellers stated in order for the ordinances to pass, all 3 Council Members must vote yes. The public hearing will take place, however, it will be continued to another meeting, so all Council Members can take part.

Council Member Sellers opened the floor to public comment.

Public Comment:

Kerry Fanwick, Miller & Fanwick, LLP, representing C.B. Patel, owner of Area 5. They have been working on this project for 2 years, and have cooperated with the City in an attempt to have opportunity to move forward on the development which was approved pursuant to the site plan. This ordinance will take away the opportunity in its entirety, and dissolve the past 2-years of work. Miller & Fanwick want the opportunity to compete with the others. The Council should adopt the alternative presented by staff, to have a limitation on the number of hotel rooms instead of hotels.

Bruce Tichinin, Attorney, represents the owners of the vacant parcel for which the Royal Inn, on 11/28/98, received an architectural and site review, and a letter from the Planning department, stated rezoning had to be completed before a building permit could be issued. The client submitted plans and received on 4/19/99, a letter from the Building Department stating they would conduct a courtesy plan check only. Mr. Tichinin believes one right of his clients has been violated, as illustrated by the letters, and if the zoning ordinance was to be adopted, the another primary right would be violated. Both claims fall under the Federal Civil Rights Act, Title 42 of the United States Code, Section 1983. The Planning department did not have the legal authority to issue a defacto moratorium on the advance of his clients hotel. Damages can be claimed against the City, but the clients are just interested in proceeding with the building process. Mr. Tichinin stated there is no basis for zoning on the basis of over concentration and his client is entitled to approval of his project, because of the Council's approval of the Ramada Inn project. There is no rational basis for determining that the Ramada on Condit, a year ago, did not constitute an over concentration of hotels, while a Royal Inn on Condit, today, would.

Ue Ching Ow feels the ordinance is extremely restricted for the following reasons: 1) the set back of 35% of each piece of property, which eliminates many ways of developing the property and 2) it would restrict what could be developed. Mr. Ow stated he would like the Council to take into consideration that developers are trying to attract the highway dollars, and yet not allowing to develop commercial property.

San Panwala, representing one of the businesses located on Condit Road, stated there are a lot of motels located in Morgan Hill, that are only getting the business from San Jose and its over flow, not local business.

He stated the Council, at this time, not to allow motels.

Paresh Patel, property owner on Condit Road, between Dan Gamel's and Carl's Jr, stated they have been working with the City with regards to easements on odd-shaped small parcels that get affected by PUD ordinances. Mr. Patel thanks the Council for including the wording on the 30' landscaping with regards to the odd-shaped parcels. Mr. Patel also recommends the Council to consider the odd-shaped property when reviewing the amendment which refers to drive aisles allowing for sufficient width for emergency vehicles.

Jeff Barnes, with Colliers International, stated there are national tenants waiting hear what the Council is going to do regarding Condit Road. He urged the Council to expedite the process and close the matter.

Council Member Sellers ask for guidance from City Attorney Helene Leichter on the various ways to proceed with the meeting. Ms. Leichter stated there are three options: 1) with the majority vote, you can vote to continue the meeting, 2) if Council has questions on the ordinance or regulations, staff can be directed to answer questions at the next or subsequent meeting and 3) take action on the item tonight; positive or negative.

Mayor Pro Tem Tate stated the Council did address the odd lots; language was added to allow for exceptions. Mr. Tate asked for staff response on the drive aisle and stated he has been re-thinking the issue of another motor vehicle use and where would it go; PUD area 2. Mr. Tate stated it should go close to the existing motor vehicle use; would like to re-look at that space to allow another motor vehicle use. Mr. Tate is opposed to putting car dealerships along the freeway, but concentrate the dealerships in close proximity. It's not the number of rooms, but the over concentration of the number of hotels in the area.

Council Member Cook asked the Council to strike motels/hotels as conditional use and add car dealership as conditional use. Regarding Area 2, agrees with one gasoline service station and no more, and with Area 5, five hotels is the maximum allowed and strike a second motor dealership use.

Council Member Sellers stated he can not see the Council proceeding with the Public Hearing and continuing it to September 20th.

Mayor Pro Tate agrees with continuing the hearing to September 6th. Council Member Sellers agreed with September 6th.

Council Member Cook expressed her desire to vote on the item tonight, but the largest issue is the number of hotels and she would go along with the hearing being continued.

Action: *On a motion by Mayor Pro Tem Tate and seconded by Council Member Cook, the City Council voted 3-0, (Kennedy and Chang absent) to continue the Public Hearing to September 6, 2000.*

OTHER BUSINESS:

**6. AWARD OF CONTRACT FOR THE MORGAN HILL INTERIM SKATE PARK
PAVING PROJECT AND REQUEST FOR BUDGET APPROPRIATION FOR
SKATE ELEMENTS**

Jim Ashcraft presented staff report and then presented Billy and Lee Lewis, who presented a model of the skate park for the Council's review.

Council Member Sellers commended the boys for their work on the model.

Council Member Sellers opened the floor to public comment. There being no comments, Council Member Sellers closed the public comment portion.

***Action:** On a motion by Mayor Pro Tem Tate and seconded by Council Member Cook, the City Council voted 3-0, (Kennedy and Chang absent) **to Award** the Contract to Balch Petroleum Contractors & Builders, Inc. for the construction of the Skate Park Paving Projects in the Amount of \$60,595, and **Appropriated** \$70,000 from the Park Development Fund Balance to Purchase the Skating Elements for the Park.*

Redevelopment Agency/City Council Action

CLOSED SESSION: *The Closed Session was not held.*

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

Legal Authority:	Government Code 54956.8 & 54956.9(c) (1 potential case)
Real Property(ies) involved:	APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Road; and APN 728-31-009 - 12.88 acres located on the southeast corner of Cochrane and Highway 101 (St. Louise Hospital property)
City Negotiators:	Agency Members; Executive Director; Interim Agency Counsel; and F. Gale Conner, special counsel
Closed Session Topic:	Potential Litigation

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

No items were noted.

ADJOURN

There being no further business, Vice-Chair/Council Member Sellers adjourned the meeting at 8:40 p.m.

MINUTES RECORDED AND PREPARED BY:

Lois A. Corbet, Deputy City Clerk/Deputy Agency Secretary